

3541 - property of Estate
Corporate "Trust Fund" Doctrine

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

HARRY E. GILLIKIN
SS# 246-16-4390
VERNA N. GILLIKIN
SS# 249-60-3801
305 Sand Hill Road
Savannah, Georgia 31410
Atty., M. E. Geary

Debtors

Chapter 11 Case

Number 88-41346

FILED

at 12 O'clock & 29 min. PM

Date 10/5/89

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

MEMORANDUM AND ORDER

On June 22, 1989, a hearing was held on the objection to Debtors' Disclosure Statement by Bank South, N.A. ("Bank South"). Bank South objected to Debtors' inclusion of a 97' trawler known as the "Lady V" as an asset of their estate. After consideration of the evidence adduced at the hearing, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) The Debtors are engaged in the business of commercial fishing and scalloping. Debtors formerly conducted business under the corporate name of Mundomar Enterprises, Inc., a Delaware Corporation which was dissolved in 1985 by operation of law.

2) Debtors have since operated the business as a sole proprietorship under the tradename of Mundomar Enterprises.

3) On October 10, 1984, Mundomar Enterprises, Inc., purchased a 97' trawler by the name of "Lady V". Said vessel was mortgaged through Bank South, N.A. ("Bank South"), with Bank South holding a security interest therein.

4) On December 2, 1988, Debtors filed a voluntary petition in bankruptcy under Chapter 11. Said bankruptcy petition erroneously listed the Debtors as Harry E. Gillikin and Verna N. Gillikin, d/b/a Mundomar Enterprises, Inc. On December 7, 1988, Debtors' attorney filed an amendment to correct the error of December 2nd and delete the name Mundomar Enterprises, Inc.

5) As of August 1, 1989, Debtors owed approximately \$285,000.00 to Bank South. This indebtedness is evidenced by two promissory notes; the first made by Harry E. Gillikin and Verna N. Gillikin and dated May 28, 1985, in the principal amount of \$248,360.00. The second promissory note was also made by Harry E. Gillikin and Verna N. Gillikin on October 28, 1988, in the principal amount of \$5,400.00.

6) Both notes are secured by a deed to secure debt dated October 10, 1984, over Debtors' personal residence on Oatland Island. In addition, a corporate guarantee and a preferred ship's mortgage on the vessel "Lady V" were made by Mundomar Enterprises, Inc., a closely held corporation whose sole shareholders were Harry E. Gillikin and Verna N. Gillikin. The Delaware Secretary of State's records indicate that Mundomar Enterprises, Inc., has been dissolved for failure to pay franchise tax or to file necessary annual reports. The vessel "Lady V" was not transferred by Mundomar Enterprises, Inc., to the individual Debtors prior to the dissolution and the vessel remains registered in the name of Mundomar Enterprises, Inc., according to United States Coast Guard records.

CONCLUSIONS OF LAW

Bank South objects to the inclusion of the 97' trawler known as the "Lady V" as an asset of the estate. 11 U.S.C. Section 541 defines "property of the estate" and actions which may be taken with respect thereto. Subsection (a) provides that "[t]he commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held . . . ". Subsection (a)(1) gives a very broad definition of "property of the estate" as: "A legal or equitable interest of the debtor in property as of the commencement of the case." In enacting Section 541, Congress intended that the definition be quite broad as indicated by the legislative history:

Under paragraph (1) of subsection (a), the estate is comprised of all legal or equitable interests of the debtor in property, wherever located, as of the commencement of the case. The scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action . . . and all other forms of property currently specified in section 70(a) of the Bankruptcy Act The debtor's interest in property also includes 'title' to property, which is an interest, just as are a possessory interest or leasehold interest, for example.

H.R. Rep. No. 595, 95th Cong. 1st Sess. 367 (1977); S. Rep. No. 989, 95th Cong., 2nd Sess. 82 (1978); reprinted in 1978 U.S.Code Cong. & Admin. News, 6323.

It is apparent from the legislative history of 11 U.S.C. Section 541 that the property of the estate encompasses all legal and equitable interests of the debtor in property, wherever located and by whomever it is held. Accordingly, since the corporation was wholly owned by the Debtors, the corporate stock and all it represents became an asset of this estate upon the filing of the Chapter 11 petition. In re Baker, 68 B.R. 360 (Bankr. D.Oregon 1986). Both Bank South and Debtors have argued that under Delaware State Corporation Law, under the "trust fund doctrine" or "denuding the corporation" theory, upon the dissolution of a corporation, the property of that entity is held in trust for the benefit of the creditors of the corporation and then for the stockholders. See Del. Code Ann. Title 8, §279 (1989); Bovay v. H.M. Byllesby & Co., 27 Del. Ch. 381, 38 A.2d 808, 174 A.L.R. 1201 (1944); See also, In re Mortgageamerica Corp., 714 F.2d 1266 (5th Cir. 1983) (explaining the history of the trust fund doctrine). Although state law defines interest in property, federal law controls the issue of whether this property becomes part of the debtor's estate in bankruptcy. In re Shore Air Conditioning & Refrigeration, Inc., 18 B.R. 643 (Bankr.

D.N.J. 1982); Matter of Lynn, 18 B.R. 501 (Bankr. D.Conn. 1982). Because property is broadly defined in Section 541, an interest in property consisting of possession and a minute ownership interest is sufficient to give the Bankruptcy Court preliminary jurisdiction over such property. State of Missouri v. U. S. Bankruptcy Court for the E.D. of Arkansas, , 647 F.2d 768 (8th Cir. 1981), cert. denied, 454 U.S. 1162, 102 S.Ct. 1035. 71 L.Ed. 2d 318 (1982).

In ascertaining the Chapter 11 debtor's interest in property, the Court should not base its decision on a balancing test of who holds the greater interest in the property but, rather, when the debtor retains any interest in the property and that property is necessary for an effective reorganization, there is a sufficient basis to conclude that the property is property of the estate. In re International Horizons, Inc., 15 B.R. 798 (Bankr. N.D.Ga. 1981), rev'd on other grounds, 21 B.R. 414 (N.D.Ga. 1982). It is sufficient that the debtor has an equitable interest in the property and debtor need not have vested title in order for the property to be property of the estate under Section 541. In re Means, 16 B.R. 775 (Bankr. W.D.Mo. 1982). Equitable title constitutes property of the estate under Section 541(a). In re Carver, 61 B.R. 824 (Bankr. D.S.D. 1986), rev'd on other grounds, 71 B.R. 20 (W.D.S.D. 1986).

Bank South argues that although Section 541(a)(1) is extremely broad in scope, it was not intended to expand the debtor's rights beyond those rights that existed at the time of filing. It further argues that Section 541 will not apply to "those instances where property which ostensibly belongs to the debtor is, in reality, held by the debtor in trust for another." While it is true that Section 541 will not apply to property in which the debtor does not hold any interest aside from that as trustee holding the property for another, in this particular instance the debtors as shareholders are also the beneficiaries of the trust fund which was created upon the dissolution of the corporation. Thus, debtors hold both a legal interest and an equitable interest; that of beneficiary once the creditors of the corporation are paid.

In light of the broad language of Section 541 defining "property of the estate", and the fact that federal bankruptcy law controls the issue of whether this property becomes part of the debtors' estate, this Court finds that the debtors' inclusion of the vessel "Lady V" as an asset of the debtors' individual bankruptcy estate in their disclosure statement is proper, and Bank South's objection is overruled.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Debtors' inclusion of the vessel "Lady V" as an asset of the Debtors' individual bankruptcy estate in their disclosure statement is proper.

ORDERED FURTHER that the objection to Debtors' disclosure statement by Bank South, N.A., is overruled. DEBTOR IS ORDERED to file an amended disclosure statement in accordance with the Court's prior direction not later than October 25, 1989.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 5th day of October, 1989.